

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the matter of Administrative Civil Liability
Complaint No. R5-2013-0527

PROSECUTION TEAM REPLY TO
APPLICATION OR MOTION FOR SEPARATE
PRIOR TRIAL OF THE ISSUE OF LATCHES,
FOR AN ORDER EXCLUDING ALL
EVIDENCE BY THE PROSECUTION TEAM,
AND REQUEST FOR DECLARATION OF
INVAILITY OF HEARING PROCEDURES

AND

MOTION TO EXCLUDE EVIDENCE
SUBMITTED BY MALAGA

**PROSECUTION RESPONSE TO APPLICATION OR MOTION BY MALAGA COUNTY
WATER DISTRICT; ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2013-0527**

TO ALL PARTIES HEREIN;

The Prosecution Team is in receipt of the above-referenced Application or Motion submitted on 24 June 2013 by Malaga County Water District (Malaga). The Motion makes three requests for an Order by the Regional Board. The Prosecution Team believes that Malaga intended to petition the Advisory Team three categories of rulings. To that end, the Prosecution Team hereby objects to Malaga's requests. In addition, the Prosecution Team separately requests that specific evidence submitted by Malaga on 24 June 2013 be rejected because it is not relevant for the Board to consider in the current proceeding.

I. The Advisory Team Should Not Exclude The Prosecution Team's 5 June 2013 Evidence Because it is Relevant To The Current Proceedings, and the Equitable Doctrine Of Latches Does Not Apply

Malaga moves for the Advisory Team to exclude all evidence submitted by the Prosecution Team because "on its face it is bared by latches." The Prosecution Team disagrees with this assessment. California Evidence Code section 210 defines relevant evidence as "evidence, including evidence

relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” All evidence submitted by the Prosecution Team in its 5 June 2013 submission is relevant to violations of Water Code section 13385 that are alleged in ACLC R5-2013-0527. The Board should be allowed to consider this evidence when it makes findings of fact related to its ultimate conclusion as to Malaga’s liability for the violations listed in ACLC R5-2013-0527.

Furthermore, for the reasons explained in the Prosecution Team’s 2 July 2013 Rebuttal Brief, the doctrine of laches does not apply in the proceedings for the above-mentioned ACLC. The Advisory Team should not exclude all evidence in this case based solely on Malaga’s erroneous argument that all violations listed in ACLC R5-2013-0527 are barred by the equitable defense of laches.

II. A Separate Prior Trial On The Issue Of Laches Is Not Appropriate Because It Is A Substantive Issue For The Central Valley Water Board To Consider

Malaga moves for a separate prior trial on the issue of laches. The Prosecution Team notes that the Advisory Team has already decided in its 6 June 2013 email to all parties that the issue as to whether the violations in the Complaint are timely, “is a substantive issue for the Central Valley Water Board to consider after the consideration of evidence and testimony from the Designated Parties and upon the technical and legal advice of the Advisory Team at the hearing.” A separate prior trial on the issue of laches is therefore inappropriate, because this is a matter for the Central Valley Water Board itself to decide. However, to the extent that the Advisory Team feels that a pre-hearing conference on the issue of Laches would resolve this issue prior to the 25/26 July 2013 Central Valley Water Board meeting and provide judicial efficiency, the Prosecution Team welcomes the opportunity to discuss this issue prior to hearing.

III. The Advisory Team Has Already Determined That The Hearing Procedures Established For This Proceeding Are Valid And Provide Malaga With Adequate Procedural Due Process

Malaga has repetitively sought to invalidate the Hearing Procedures for this proceeding based on claims that they are either and “absolute nullity” or somehow do not meet the requirements contained in the California Government Code or the California Code of Regulations. Again, the Advisory Team has

already ruled that the Hearing Procedures issued for this proceeding are valid. For the reasons described in the Prosecution Team's 2 July 2013 Rebuttal Brief, we agree with the Advisory Team that the Hearing Procedures are valid and meet all statutory and regulatory requirements. Malaga's request for declaration that the Hearing Procedures are invalid should again be denied.

IV. Malaga Evidence Exhibit A Should Be Excluded Because It Is Not Relevant To The Proceedings At Hand

In its 24 June 2013 submission, Malaga references a 7 July 2010 Demand for Payment letter issued by the Executive Office of the Central Valley Water Board (Malaga Exhibit A). In this letter, the Central Valley Water Board requests immediate payment of \$131,165 based on Malaga's failure to complete a Compliance Project within the timeframes adopted in Administrative Civil Liability Order R5-2006-0003. The outstanding liability related to Malaga's alleged failure to comply with the terms of R5-2006-0003 or requirements of California Water Code 13385(k) are not relevant to the instant case. It is not a fact of consequence in determining the Board's action related to the violations alleged in ACLC R5-2013-0527, and therefore is not admissible as relevant evidence in accordance with California Evidence Code section 351.

However, the Prosecution Team recognizes that Central Valley Water Board members may wish to enquire about the 7 July 2010 Demand for Payment letter or Malaga's compliance with R5-2006-0003 at the 25/26 July 2013 hearing. To that end, the Prosecution Team requests that the Board Chair provide both sides with an additional 10 minutes beyond the total 30 minutes allotted to each side in the Hearing Procedures to discuss issues related to compliance with R5-2006-0003 if requested by Board members.

Dated: July 2, 2013

Respectfully submitted,

By: Electronically signed by

Ellen Howard, Counsel
CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, CENTRAL
VALLEY REGION PROSECUTION TEAM